IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7886 of 1999

with

CIVIL APPLICATION NO 1833 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

and

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

SHILPABEN LALLUBHAI (MINOR), THRO'LALLUBHAI R DESAI

Appearance:

MR HS MUNSHAW for Petitioner

MR BG JANI for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 5

CORAM : MR.JUSTICE D.C.SRIVASTAVA

and

MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2000

ORAL JUDGEMENT

[Per : D.C.Srivastava,J.]

In response to the notice, Shri B.G. Jani appears for respondents NOs. 1 to 4. Respondent NO.5 is

the driver of the appellant and is a formal party. The appeal can be decided without notice to respondent NO.5.

With the consent of the learned counsel for the appellant and the respondents, this appeal is proposed to be disposed of finally at the admission stage.

The tribunal has awarded compensation of Rs. 3,00,000/- with 15% per annum interest from the date of filing of the petition till the realization with further direction that if the amount is paid within a period of two months from the date of decree excluding the period consumed in obtaining certified copy of the judgment and decree, interest shall be calculated at the rate of 12% per annum. Proportionate costs were also awarded to the claimant.

The apparent illegality in the impugned award is that the tribunal has awarded compensation of Rs.3,00,000/- ignoring the claim of the petitioner where total compensation of Rs.2,00,000/- was claimed. The tribunal had no jurisdiction to award compensation in excess of the amount claimed in the petition. It is not on record that at any stage of the proceedings before the tribunal, the petition was amended and the claim was enhanced to Rs.3,00,000/-. Consequently, the impugned award of the tribunal awarding Rs.3,00,000/- as compensation has to be reduced to Rs.2,00,000/- only.

Shri Munshaw, learned counsel for the appellant has argued that that he has challenged the award on other grounds also but we are not inclined to accept his contention for the obvious reason that the claim for the purpose of this appeal is valued only at Rs.1,00,000/over which court fees has been paid. It is, therefore, obvious that the entire award has not been challenged and the challenge to the entire award in the memo of petition is only ornamental. Since we have already held above that the compensation awarded by the tribunal has to be reduced to Rs.2,00,000/- only, we need not enter into other grounds of challenge taken in the grounds of appeal.

Shri Munshaw has further argued that the interest at the rate of 15% per annum awarded by the tribunal is excessive and according to him, this interest should have been at the rate of 12% per annum from the date of the application till deposit. Shri Jani, however, points out that in the award itself, it is mentioned that in case the awarded amount is paid within period of two months from the date of the decree excluding the period consumed

in obtaining certified copy of the judgment and decree, the interest shall be calculated at the rate of 12% per annum. However, Shri Munshaw informs that the appellant has already deposited sum of Rs.2,15,365.00 in the tribunal. The objection of Shri Jani is that this amount was deposited after the appeal was filed, hence, concession granted by the tribunal on the rate of interest is not available to the appellant. We are not convinced with this argument. We feel that the interest of justice will be met if the interest awarded by the tribunal is reduced to the flat rate of 12% per annum from the date of the petition till the date of deposit of the entire amount in the tribunal.

The compensation awarded on other heads by the tribunal does not require any interference.

The appeal, therefore, succeeds in part only. The award of the tribunal is modified. The compensation awarded by the tribunal at Rs.3,00,000/-shall be read as Rs.2,00,000/- and the interest shall be read as 12% per annum from the date of the petition till the date of actual deposit of the entire amount before the tribunal. Rest of the award is maintained. The directions given by the tribunal for disbursement of the awarded amount are also maintained. The appellant is permitted to deposit the balance amount if any in the tribunal on or before 30th September, 2000. No order as to costs.

Since the appeal has been disposed of at the admission stage, the civil application becomes infructuous and is rejected as infructuous with no order as to costs.

7.8.2000 (D.C.Srivastava,J.)

(H.K. Rathod,J.)

Vyas